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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Implementation of the Pay Telephone )  
Reclassification and Compensation )  
Provisions of the Telecommunications )  
Act of 1996 )

CC Docket No. 96-128

AT&T Request for Limited Waiver Of )  
the Per-Call Compensation Obligation )

To: Chief, Common Carrier Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

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Communications Council

May 18, 1998

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To: Chief, Common Carrier Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION**

The American Public Communications Council ("APCC") hereby opposes the petition of Sprint Corporation, filed May 4, 1998, seeking reconsideration of the Bureau's Order, DA 98-642, released April 3, 1998. Sprint contends that the Bureau should not have prescribed an interest rate of 11.25% per year for late compensation payments. According to Sprint, the applicable interest rate should be based on the interest rate set by the Internal Revenue Service, currently 8%, which has been used for purposes of carrier refunds of tariff charges.<sup>1</sup>

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<sup>1</sup> However, this 8% rate is compounded daily. See 1997 Annual Access Tariff Filings, 13 FCC Rcd 3815, 3909 (1997). In the event that the Bureau reconsiders and adopts the rate suggested by Sprint, the rate must be compounded daily in order to be consistent with the case law cited by Sprint.

The cases cited by Sprint are inapposite. Although Sprint claims that interest for late compensation payments is analytically "no different than interest on Commission-mandated refunds," in fact there is a significant difference. In the case of refunds, the carrier's obligation to pay a refund is not known until the Commission rules. In the case of compensation, the carrier is aware of its obligation to pay and is simply late in meeting that obligation.<sup>2</sup> Therefore, the Bureau was entirely justified in setting a different rate for late payment of compensation.

It was quite reasonable for the Bureau to set a late-payment fee based on local exchange carriers' rate of return. Although Sprint claims that a rate of return may not be used to address "short term cost of money," Sprint proposed to do exactly that in its recent tariff filing on Flex ANI service. In that tariff filing, Sprint's local exchange carriers ("LECs") proposed to apply a 11.25% rate of return to a "nonrecurring charge" for Flex ANI that is to be amortized over a period of only one year. Sprint Local Telephone Companies, Revision of Tariff F.C.C. No. 1, Transmittal No. 53, Description and Justification at 2.

Moreover, as Sprint acknowledges, the Commission expressly found the 11.25% rate of return an appropriate means of calculating the element of the payphone compensation rate that is intended to capture the cost incurred by payphone service

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<sup>2</sup> Indeed, carriers that are late in paying payphone compensation are in violation of Commission orders and are subject to substantial penalties. To APCC's knowledge, Sprint has failed to make its fourth quarter 1997 compensation payments to independent PSPs by either the April 1 deadline for per-call payments or the special April 30 deadline for fourth quarter 1997 per-phone payments.

providers ("PSPs") due to short-term time lags in compensation payments. Second Report and Order, 13 FCC Rcd 1778, 1805-06 (1997), remanded on other grounds, MCI v. FCC, No. 97-1675, May 13, 1998. No party requested either reconsideration or court review of that determination.

In the event that the Bureau does reconsider its ruling on the interest rate for late payments, the rate should be increased, not decreased. To the extent that the Bureau wishes to reexamine the basis for assessing late payment fees, a more appropriate analogy than the refund analogy offered by Sprint is provided by the late payment provisions of interexchange carriers' own tariffs.<sup>3</sup> In Sprint's case, its interstate tariff provides, in part:

In the event that the Carrier incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Carrier, the Carrier may charge the subscriber all such fees and expenses reasonably incurred, including a collection fee on the unpaid charges accruing at a rate of one-and-one-half percent (1.5%) per month.

Sprint, Tariff F.C.C. No. 1, § 3.11.6. This collection fee is considerably higher than the 11.25% annual rate established by the Commission.

Sprint's tariff also provides:

Calls billed by Local Exchange Telephone Companies on behalf of Sprint are subject to any late payment charges that the Local

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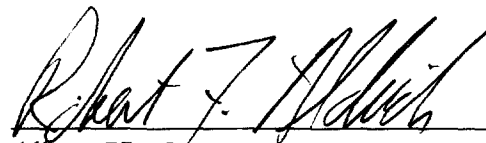
<sup>3</sup> The analogy is still not perfect. Unlike a carrier offering a tariffed service, the payphone service provider does not have an effective means of simply cutting off service to carriers that refuse to pay their compensation payments on time. Thus, payphone service providers are more vulnerable to late payments and should be entitled to assess a higher late payment fee than the fees applicable in carrier tariffs.

Exchange Telephone Companies may employ in their bill treatment process.

Id., § 3.11.1. LEC charges for late payments may vary from one jurisdiction to another. According to Bell Atlantic's business office, however, Bell Atlantic charges late payment fees of 1% per month to D.C. customers and 1.5% per month to Virginia customers. These rates are significantly higher than the 11.25% annual rate set by the Bureau.

Dated: May 18, 1998

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert F. Aldrich", is written over a horizontal line.

Albert H. Kramer

Robert F. Aldrich

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& OSHINSKY LLP

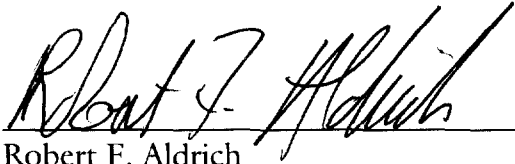
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 1998, a copy of the foregoing Opposition to Petition for Reconsideration was delivered by hand to the following:

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